

Bail Slip

The Appellant/Accused was directed to be released on bail by the order of this Court dated 9.6.99 and made in Crl.M.P.No.3746 of 1999 in Crl.Appeal No.388 of 1998 (SC No.118 of 1997 on the file of the Additional Sessions Judge-cum-Chief Judicial Magistrate, Cuddalore).

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 4-7-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.388 of 1998

Senthilkumar

... Appellant/Accused

vs.

State by
Inspector of Police
Buvanagiri Police Station
Buvanagiri, Cuddalore Dist.
(Cr.No.269/97)

... Respondent

Criminal appeal filed under Sec.374 of the Code of Criminal Procedure against the judgment dated 21.4.1998 and made in S.C.No.118/1997 on the file of the Additional Sessions Judge cum Chief Judicial Magistrate, Cuddalore.

For Appellant : Mr.V.Gopinath
Senior Counsel
for M/s.L.Mahendran and
S.Suresh

For Respondent : Mr.V.M.Rajendran,
Additional Public
Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The sole accused in a case of murder, on being found guilty as per the charge and awarded a life imprisonment by the Court of the Additional Sessions, Cuddalore, in S.C.No.118 of 1997, has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal are:

(a) P.W.1 Parameswari, was living with her parents P.Ws.2 and 3. Three years prior to the occurrence, she was given in marriage to one Ilamoorthy of Koyilakuppam. She lived for a month with him, and due to the quarrel as to the Seervarisai, she came to her parental home and living with the parents. During that time, she developed illicit intimacy with the accused and gave birth to a male child, which was named as Iyyappan. After the birth of the child, she was given in marriage to one Kaliamurthy of Sathapadi. The said Kaliamurthy was employed at Neyveli. She was living with him, and the child was also with them. During that period, the accused went over to her residence at Neyveli and was compelling her to share the bed with him, to which course she was not amenable; but, she reported the same to her husband. On coming to know about the same, her husband Kaliamurthy sent her out. Then, she went to her parental home, and she was living with them. Even during that period, the accused used to come there often and was demanding for the sexual intercourse.

(b) On the date of occurrence i.e., 4.4.1997, the accused came to her house and was calling her for the sexual intercourse, to which course she was not amenable. Immediately, he took the child to the house of his aunt namely Kamatchi, telling that he has to administer poison to the child. P.Ws.1, 2, 3 and 5 also followed him. On coming to the house of the aunt, the accused poured poison into the ears of the child. On seeing this, P.W.1 interfered and made an attempt to snatch the child. The appellant/accused got wild and dashed the child on the floor, as a result of which the 10 months' old child died at the spot. The accused fled away from the place of occurrence. P.W.1 took the child to her house. Then, she went to Buvanagiri Police Station, where P.W.10 the Sub Inspector of Police, who was on duty, on the report of P.W.1 under Ex.P1, registered a case in Crime No.269/97 under Sec.302 of I.P.C. Ex.P8 the printed First Information Report was despatched to the Court.

(c) P.W.11 the Inspector of Police, on receipt of the copy of F.I.R., took up the case for investigation, proceeded to the spot, made an observation in the presence of two witnesses, prepared an observation mahazar Ex.P5 and drew a rough sketch Ex.P9. He recovered the material objects from the place of occurrence. Then, he conducted an inquest on the dead body of the child in the presence of witnesses and panchayatdars and prepared Ex.P10 inquest report. The child was sent to the Government Hospital, Chidambaram, along with a requisition for the conduct of autopsy.

(d) P.W.14 the Civil Assistant Surgeon, attached to the Government Hospital, Chidambaram, on receipt of the requisition, conducted autopsy on the dead body of the child and found the following injuries.

"External Injury:

Diffused swelling on the back of head of 4" x 4".

Internal Injury:

On opening the skull the whole of occipital bone is fractured. The right parietal bone and temporal bone are fractured. The left parietal bone is fractured."

<https://hcservices.ecourts.gov.in/hcservices/>

The Doctor issued Ex.P4 postmortem certificate and opined that the deceased would appear to have died of shock and haemorrhage due to

the head injury sustained.

(e) During investigation, the Investigating Officer arrested the accused on 5.4.1997, when he volunteered to give a confessional statement, which was recorded in the presence of two witnesses. Ex.P6 is the admissible part of the said confessional statement, pursuant to which he produced M.O.1 a plastic box, which was also recovered under a mahazar. Then, the statements of P.Ws.1, 2, 3 and 5 were recorded under Sec.164 of Cr.P.C. by the Judicial Magistrate, Chidambaram, M.O.1 was subjected to chemical analysis, and the Chemical Analyst's reports Exs.P15 and P16 and the Serologist's report Ex.P17 were also obtained and placed before the Court. On completion of the investigation, the Investigating Officer filed the final report.

3. The case was committed to the Court of Session, and necessary charges were framed against the appellant/accused.

4. In order to substantiate the charges levelled against the appellant/accused, the prosecution relied on the evidence of 11 witnesses, 17 exhibits and 4 material objects. On completion of the evidence on the side of the prosecution, the trial Court questioned the accused under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. He denied them flatly as false. No defence witnesses were examined. On hearing the arguments advanced and scrutiny of the materials, the trial Court found the accused/appellant guilty as per the charge and awarded the life imprisonment, which is being challenged before this Court.

5. The learned Senior Counsel appearing for the appellant made the following submissions:

(i) The prosecution brought forth its case with a specific motive for the accused to commit the crime, in the sense that P.W.1 was making claim over the property of the appellant through the child, and on that ground, the appellant/accused has acted and committed the crime; but, P.W.1 has thoroughly given a go-by to the alleged motive.

(ii) The accused has taken the child, according to the prosecution, from the house of P.Ws.2 and 3 to his aunt's house deliberately for the purpose of killing the child. But, from the evidence, it would be clear that he has taken the child to a bunk shop and has also purchased biscuits, which would falsify the earlier part of the evidence of P.Ws.2 and 3.

(iii) P.Ws.1 to 3 have specifically stated that he poured poison into the ears of the child. The postmortem Doctor's evidence would clearly reveal that nothing was found in the ears of the child. Thus, it would be quite clear that P.Ws.1 to 3 could not have witnessed the occurrence at all, and they have come forward with a false theory.

(iv) The prosecution much relied on the recovery of M.O.1 pursuant to the confessional statement alleged to have been given by the accused on 5.7.1997. But, the witnesses have spoken to the fact that the accused was caught red-handed, and he was tied in a post, and he was subsequently handed over to the police. Under such

circumstances, the arrest of the accused, the alleged confession and the recovery cannot, but be false, and that part of the evidence has got to be rejected.

(v) It is pertinent to point out that all the witnesses are in inimical terms, which was brought forth before the Court. Apart from that, pursuant to a quarrel, the occurrence has taken place, and even by pulling the child from one hand to the other, the child would have fallen down, and the said injuries would have been caused, which resulted in the death of the child. Under the circumstances, the lower Court without considering the evidence proper, has found the appellant/accused guilty erroneously, and hence, he has got to be acquitted by this Court.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. The Court paid its full attention on the rival submissions made and had a thorough scrutiny of the available materials.

8. In the instant case, it is not in controversy that the 10 months' old child died out of homicidal violence. Apart from putting the direct evidence before the Court, the prosecution has relied on the evidence of P.W.4 the Doctor, and his certificate Ex.P4, wherein he has opined that the child died out of shock and haemorrhage due to the injuries found on the head. It is also pertinent to point out that the appellant/accused has never questioned this fact that the child died out of homicidal violence either before the trial Court or before this Court. Hence, this Court feels no difficulty to hold that the 10 months' old child died out of homicidal violence.

9. The specific case of the prosecution was that it was the accused, who dashed the child on the ground, and the child died out of the injuries sustained. In order to establish the same, the prosecution examined P.Ws.1 to 3 and 5. A perusal of their evidence would clearly prove the fact that it was the accused, who dashed the 10 months' old child on the floor, due to which the child sustained injuries and died. The first contention put forth by the learned Senior Counsel for the appellant is that the motive part has not been proved. The Court is unable to agree with the said contention that it was the accused who has made a statement that she wanted to claim the property through the child, and therefore, the child should be finished off. Nowhere in the evidence, P.W.1 had stated that it was her intention to claim anything out of the property of the accused through the child. In such circumstances, it can be well stated that it was the making of the appellant/accused; but, it was not the motive for the occurrence as alleged by the prosecution.

10. So far as the second contention that P.Ws.1 to 3 have categorically spoken to the fact that he administered poisonous substance into the ear of the child, and the postmortem Doctor has also deposed that no poisonous substance was found in the ear of the child is concerned, it was nothing but an exaggeration that he poured poisonous substance, because according to the prosecution, the appellant/accused went to the house of P.Ws.2 and 3, when all the

four witnesses were present, and he took the child from their house stating that he was going to pour poison into the ear of the child, and so saying, he took the child, and all the witnesses followed him. It is pertinent to point out that on seeing the appellant/accused administering poison into the ears of the child, the child was plucked by P.W.1. It is to be remembered at this stage that all the witnesses were seeing the accused administering poison, and even before the poison was administered into the ear of the child, the child was pulled. Under the circumstances, the contention that no poisonous substance was found in the ear of the child cannot be accepted so as to disbelieve the evidence of the witnesses. It has to be pointed out that no explanation is forthcoming from the appellant/accused why and under what circumstances he took the child from the hands of P.W.1, who was in the house of P.Ws.2 and 3, to the house of his aunt at the time of occurrence.

11. The next contention that at the time of occurrence, one was trying to make an attempt to pull the child from the hands of the other, and in that course, the child would have fallen down, and the injuries would have been caused cannot be accepted, in view of the postmortem certificate Ex.P4, wherein the injuries have been narrated. According to the postmortem Doctor, the bones on the occipital and parietal regions were found fractured, and mere falling on the ground cannot cause such fractures, as found in the skull. Under the circumstances, this contention cannot also be accepted.

12. Apart from the above, the evidence of P.Ws.1 to 3 would clearly reveal that it was the accused who dashed the child on the floor, resulting in the death of the 10 months' old child. The ocular testimony is also fully corroborated by the medical evidence.

13. The last contention put forth by the learned Senior Counsel for the appellant is that the recovery of M.O.1 pursuant to the confessional statement alleged to have been given by the appellant on his arrest on 5.7.1997, cannot be believed in view of the evidence of P.Ws.1 to 3 that the accused was caught red-handed in that place itself. The Court perused the evidence of P.Ws.1 to 3 on this aspect. The Court has to necessarily agree with the learned Senior Counsel for the appellant that this part of the evidence as to confession and recovery has got to be eschewed. Even rejecting that part of the evidence of the prosecution witnesses, the Court is satisfied with the evidence of P.Ws.1 to 3 that he has dashed the child on the ground and has caused such grievous injuries, which resulted in the death of the child. Their evidence has got to be accepted, since the same is cogent, acceptable, natural and convincing.

14. In the instant case, the act of the accused cannot, but fall within the ambit of murder, as he has committed the heinous crime of dashing a 10 months' old child on the ground and caused instantaneous death. Thus, the lower Court was perfectly correct in recording a finding that he has committed the murder of the child and in awarding the punishment, as required under the provisions of the Indian Penal Code. This Court is unable to notice any reason to interfere either

in the conviction or in the sentence awarded by the lower Court, and hence, they are sustained.

15. In the result, this criminal appeal fails, and the same is dismissed. It is reported that the appellant is on bail. Hence, the Sessions Judge will take steps to commit him to prison to undergo the remaining period of sentence.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

- 1)The Addl. Sessions Judge cum Chief Judicial Magistrate, Cuddalore.
2. Through the Principal Sessions Judge, Cuddalore.
- 3.The District Munsif cum Judicial Magistrate, Porto Novo.
- 4)The District Collector, Cuddalore.
- 5)The Director General of Police, Chennai.
- 6)The Public Prosecutor, Madras.
- 7)The Superintendent, Central Prison, Cuddalore.
- 8)The Inspector of Police, Buwanagiri Police Station
Buwanagiri, Cuddalore Dist. (Cr.No.269/97)

nsv/
PS (CO)
km/11.7.

WEB COPY

C.A.No.388 of 1998